

IN THE MATTER OF	:	BEFORE THE
<b>THUNDER HILL, LLC</b>	:	HOWARD COUNTY
Appellant	:	BOARD OF APPEALS
vs.	:	HEARING EXAMINER
<b>HOWARD COUNTY PLANNING BOARD</b>	:	BA Case No. 661-D
Appellee		

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**DECISION AND ORDER**

On May 26, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Thunder Hill, LLC (the "Appellant"). The Appellants are appealing the Howard County Planning Board's April 2, 2009 letter of decision denying the Appellant's proposed access amendment (FDP-43-A-III) to previously approved and recorded FDP-43-A-II, based in pertinent part on traffic safety issues and the apparent understanding that the State Highway Administration ("SHA") was opposed to the access amendment.

The Appellants certified that notice of the hearing was advertised and that the property owner and adjoining property owners were notified as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William Erskine, Esquire, represented the Appellant. Bob Smith, Alex Kopicki, Mickey Cornelius, Diane Schwarzman, Tom Butler, Julia McCready, Doris Morgan, Marcia White, Abby Hendrix, Kevin White, Philips Engelke, Michael McKenna, Sandy Cedarbaum, and Karen Gray testified in support of the petition. Bridget Mugane, Barbara Russell, Froydis Beckerman, Thomas Stanton, Edward Walker, and Judith Gettleman testified against the petition.

### General Background

#### **The FDP Review and Approval Process**

Given the nature of this appeal, a brief discussion of the Final Development Plan review, approval, and amendment process for New Town ("NT") zoned property is warranted. Pursuant to Section 125.C of the Howard County Zoning Regulations (the "Zoning Regulations"), the use of land in an NT Zoning District is controlled through a Final Development Plan ("FDP"), which must be submitted to the Planning Board for approval. The FDP includes both drawings delineating the various land use areas and text (criteria) and must be consistent with the Comprehensive Sketch Plan<sup>1</sup> previously approved by the Planning Board. The Petitioner may also submit the associated Site Development Plan ("SDP") for the FDP to the Department of Planning and Zoning ("DPZ") for concurrent review and, eventually, for the Planning Board's final approval, where provided for by the Planning Board.

Before the FDP and SDP are submitted to the Planning Board for its consideration, DPZ's Division of Land Development evaluates them through its Subdivision Review Committee ("SRC"), a state and county interagency review group (including the State Highway Administration) (the "SHA") organized to coordinate the review process. Howard County Subdivision and Land Development Regulations, Section 16.144. Amendments to approved FDPs are subject to the same Section 125.C and SRC review procedure.

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<sup>1</sup> Section 125.C.3 of the Zoning Regulations defines a Comprehensive Sketch Plan as a drawing or drawings setting forth in pertinent part the acreage for each land use, the location of all streets, roads, utilities, open spaces, and text material (criteria).

DPZ also submits a Technical Staff Report ("TSR") on the proposed FDP or FDP amendment to the Planning Board. The TSR describes the plans and any SRC action on the plans and contains DPZ's recommendation of approval or denial.

**FDP-43-A, FDP-43-A-I, FDP-43-A-II, FDP-43-A-III, Village of Oakland Mills,  
Section 3, Area 1**

In this appeal, the subject site is "Village of Oakland Mills," Section 3, Area 1 on Tax Map 30, Grid 22, Parcel 362, Lot/Parcel "A" (the "Site"). The 2.62-acre NT zoned property is located at the intersection of Thunder Hill and Twin Knolls Roads and Maryland Route 175 (Little Patuxent Parkway) in the 6<sup>th</sup> Election District of Howard County (the "Site"). The Site is also known as 5585 Twin Knolls Road.

"Village of Oakland Mills," Section 3, Area 1 is an employment center/commercial area FDP approved by the Planning Board in the mid-1970s as FDP-43-A, and later amended through FDP-43A-I (1978), and FDP-43-A-II (1983). A reduced copy of the five-sheet 1983 FDP Amendment, FDP-43-A-II, is attached to the appeal petition.

Sheet 3 of FDP 43-A-II sets forth in text the Site Design Criteria for "Village of Oakland Mills," Section 3, Area 1. Section 3.b states, "Entrance to and egress from the commercial areas may be gained only from Twin Knolls Road." The Section 3, Area 1 map on Sheet 4 depicts in pertinent part a vehicular ingress and egress restriction line along Thunder Hill Road.

In 2008, Thunder Hill, LLC, petitioned the Howard County Planning Board to amend FDP 43-A-II by eliminating the access/egress restrictions from the Site Design Criteria and removing the "Vehicular Ingress and Egress Restriction" line along Thunder Hill Road in connection to its plan to demolish the abandoned bank building on the Site and construct a

Walgreens store. The associated SDP initially depicted a right turn-in along Thunder Hill Road, before Twin Knolls Road, but the plan was later amended to include a deceleration lane/entrance. The Planning Board denied the proposed FDP amendment, FDP-43-A-III, relying in part, apparently, on what it believed to be SHA's recommended denial of the plan.

Appellant Thunder Hill, LLC is appealing the Planning Board's April 2, 2009 letter of decision denying the Appellant's proposed access amendment, FDP-43-A-III. It contends the Planning Board based its decision on the erroneous understanding that SHA recommended the plan amendment, including the deceleration lane, be denied. It claims to be aggrieved because the additional access is a programmatic requirement for the retail user Walgreens.

### **Exhibits**

The Appellant introduced the following documents into evidence:

#### **Appellant's Exhibits**

##### **Exhibit #**

1. A 19-page paper reproduction of a PowerPoint presentation depicting the following:

- Page 1. Cover Sheet
- Page 2. Existing Site Conditions
- Page 3. Site Layout
- Page 4. Blowup of Site Layout showing deceleration land
- Page 5. Traffic Circulation (Peak Hour Site Traffic)
- Page 6. Building Architecture
- Page 7. Copy of Undated letter from Karen L. Gray, Chair to Oakland Mills Board of Directors to Ms. Marsha McLaughlin, DPZ Director, RE: SDP-2008-097;  
Copy of February 6, 2008 letter from Deb Bach, Oakland Mills Covenant Advisor, to Alex Kopicki, Manekin, LLC
- Page 8. Copy of Notice of Completion of Architectural Review Committee Action letter dated 5/21/09;  
Copy of April 3, 2009 letter to Charles Dammers, Chief DPZ Development Engineering Division from Daniel Doherty, SHA

Engineering Access Permits Division

- Page 9. Aerial image of deceleration lane on Thunder Hill Road, north of MD 175, for left turn access to Lightning View Road
  - Page 10. Aerial image of deceleration lane on Snowden Square Drive, north of Snowden River Parkway, for right turn access to development
  - Page 11. Photographs Depicting Lightning View Road Deceleration Conditions
  - Page 12. Photographs Depicting Visibility of Clarksville Walgreens
  - Page 13. Exiting Site Visibility (looking East from MD 175)
  - Page 14. Exiting Site Visibility (looking further East from MD 175)
  - Page 15. Exiting Site Visibility along Thunder Hill Road at Site
  - Page 16. Existing Site Conditions
  - Page 17. MD 175 at Thunder Hill Road Conditions
  - Page 18. FDP 43-A-II, Sheet 4 of 5 depicting vehicular ingress and egress restriction
  - Page 19. FDP 43-A, Sheet 2 of 3 depicting vehicular ingress and egress restriction
- 2. July 28, 2008 Revised Traffic Study for Walgreens – Thunder Hill Road
  - 3. Excerpts from American Association of State Highway and Transportation Officials ("AASHTO"), A Policy on Geometric Design of Highways and Streets, 2004 (Fifth Edition)
  - 4. Twelve aerial and street-level photographs of area right turn deceleration lanes
    - A. Aerial - Tamar Dr. and Carriage House Lane
    - B. Street Level - Tamar Dr. and Carriage House Lane
    - C. Aerial – Frederick Road and St. John's Church
    - D. Street Level – Frederick Road and St. John's Church
    - E. Aerial – Frederick Road and Howard County Library
    - F. Street Level – Frederick Road and Howard County Library
    - G. Aerial – MD 99 and Rose Trail
    - H. Street Level – MD 99 and Rose Trail
    - I. Aerial – MD 99 and Green Clover Drive
    - J. Street Level -- MD 99 and Green Clover Drive
    - K. Aerial – Rogers Ave. and Church Lane; Rogers Ave. and N. Ridge Rd.
    - L. Street Level – Rogers Ave. and N. Ridge Rd.
    - M. Street Level – Rogers Ave. and Church Lane
  - 5. DPZ, Division of Land Development, Review and Comments for SDP-08-097, Walgreens Drug Store, from Daniel Doherty, dated October 23, 2008
  - 6. Three 2006 aerial photographs illustrating traffic accidents at the intersection of MD 175 and Thunder Hill Road for 2006, 2007, and 2008

Opponents introduced the following document into evidence:

**Opponents' Exhibits**

**Exhibit #**

1. Excerpts from American Association of State Highway and Transportation Officials ("AASHTO"), A Policy on Geometric Design of Highways and Streets, 2004 (Fifth Edition)

**FINDINGS OF FACT**

1. At the outset of the hearing, Mr. Erskine stated the proposed FDP amendment plan is modified to include a reverse symmetrical curve taper (a shortened taper) to permit motorists to enter the deceleration lane more quickly.

2. The Appellant presented Bob Smith as a witness. Mr. Smith testified to being a member of Thunder Hill LLC, and a commercial broker and principal with KNLB. It was his testimony that SHA initially recommended to the Planning Board that FDP-43-A-III be denied, because the plan as originally filed proposed a one-way right entrance off Thunder Hill Road. He also stated that the lack of visibility made access more important to the location of the proposed Walgreens.

3. Appellant's witness Alex Kopicki, a developer with Manekin, LLC, testified the proposed Walgreen's would be the second in the area, and that Walgreens requires all stores to have a "hard corner," or signaled intersection. Referring to Appellant's Exhibit 1, Page 12 (photographs depicting visibility of the Clarksville Walgreens), he explained a "hard corner" in commercial real estate refers to a site located where two roads intersect. Hard corners thus have two frontages, making them more visible. Referring to Appellant's Exhibit 1, Pages 13-17, he explained the grade separation or differential and lack of visibility at the Site. To capture volume

because of the site's low grade and lack of visibility, Walgreens required a second means of ingress.

4. Mr. Kopicki further testified to meeting with the Oakland Mills Village Board ("OMVB") to present the various iterations of a proposed access off Thunder Hill Road. Because OMVB and SHA both opposed the original right-hand access lacked a deceleration lane and simply tied into the road, the Appellant redesign the proposed access as a full deceleration lane, which OMVB approved at a meeting. The lane location is intended to be far enough from MD 175 and Twin Knolls Road to prevent motorist confusion and maintain traffic flows. He also presented the proposed deceleration lane to the Planning Board, which at that time was not designed with a reverse symmetrical taper.

5. Referring to Appellant's Exhibit 1, Page 7, an undated letter from Karen L. Gray, OMVB Chair, to Ms. Marsha McLaughlin, DPZ Director, he testified the Appellant had presented the proposed deceleration lane to OMVB before or at the October 14, 2008 meeting. The letter states the OMVB voted to support the proposed access on Thunder Hill Road, as shown on SDP-2008-097.

6. Appellant's witness Mickey Cornelius, a professional engineer and traffic consultant, prepared a traffic analysis ("TIA") dated July 28, 2008 for the right-hand turn proposal (Appellants' Exhibit 2). The study examined traffic at five area intersections and included existing background traffic and trip generation rates for approved developments and the proposed Walgreens. The study demonstrates these intersections would continue to operate at an acceptable level of service even with the Walgreens site. The study also includes a summary of traffic accidents for 2004, 2005, and 2006 at the Thunder Hill/MD 175 intersection, which on the

average was about 10 per year, or a rate of 0.5 per million, half the rate at which SHA would consider doing safety improvements.

7. After the Planning Board proceeding, Mr. Cornelius conducted additional speed studies at the MD 175 turn-ins to Thunder Hill Road and southbound on Thunder Hill Road in relation to the proposed deceleration lane. The studies looked at the 85<sup>th</sup> percentile speed, the typical speed at which motorists travel. The study showed westbound vehicles turning into Thunder Hill Road and off the two MD 175 southbound exit lanes travel about 27 miles per hour ("MPH") in one lane and 28 in the second. The right turn, yield condition from eastbound MD 175 was about 24-26 MPH.

8. He testified that in those circumstances where the County requires a deceleration lane, Section 2.5.B.5.d of the Howard County Design Manual, Volume III, Roads and Bridges (the "DM Vol. III") instructs road design professionals to follow Chapter 10, Exhibit 10-73 of AASHTO's 2004 "Policy on Geometric Design of Highways and Streets" (the "AASHTO Green Book"). Chapter 10 discusses different types of deceleration lanes in high-volume, grade-separated, roadway and interchange design scenarios. Exhibit 10-73 establishes the customary length of deceleration lanes based on the design speed and speed reached on exit curves.

9. It was his opinion Chapter 9, not Chapter 10, is the appropriate guide to the proposed deceleration lane, as Chapter 9 addresses intersection design standards for at-grade highways. Chapter 9's approximate total deceleration lane length at an intersection, based on a design speed of 30 MPH and a full stop is 170 feet (Appellant's Exhibit 3, AASHTO Green Book Page 714). The Appellant's engineer used this criterion as the guide for the deceleration lane. Because the average speed is about 25-26 MPH, and the total length of the deceleration lane is about 220



feet, including the stacking area, it will allow motorists to safely reduce speed before stopping. Mr. Cornelius also observed the AASHTO Green Book acknowledges its deceleration lengths are a "desirable goal and should be provided where practical" (Appellant's Exhibit 3, AASHTO Green Book Page 714). He further testified the AASHTO Green Book does not address deceleration lanes for speeds lower than 30 MPH at signalized higher-classification highways, or for lower-classification highways like Thunder Hill Road, a collector road with a 25 MPH speed limit, and reiterated that DM Vol. III's guidance on deceleration lane length applies only where the manual requires one.

10. During a computer simulation illustrating the movement of traffic at the MD 175/Thunder Hill intersection, he explained it modeled the new peak hour traffic projections shown in Appellant's Exhibit 1, Page 5, which are derived from the TIA prepared for the Walgreens project (39 trips during morning peak hours and 128 during evening peak hours). The simulation revealed the proposed deceleration lane had little impact on southbound traffic, with minor traffic in the morning and about one car per minute entering and exiting the Site in the evening. According to Mr. Cornelius, the traffic circulation projection depicted in Appellant's Exhibit 1, Page 5, illustrates the numbers of motorists turning in at either the deceleration lane or Twin Knolls, which in his view was not a tremendous amount, and which he interpreted as meaning no backup in the through lanes.

11. As to the lane's safety, he testified the lane itself would not cause safety problems, since it allowed motorists to reduce their speed sufficiently before stopping within the site.

12. He offered the intersection of Lightning View Road and Thunder Hill Road, just north of the site across MD 175, as an area example of a left-turn deceleration lane that is both

safe and smaller in total length than the AASHTO Green Book advises and closer in spacing than DM Vol. III, Section 2.6.D advises. The distance between MD 175 and the left turn from the deceleration lane along Thunder Hill Road is 336 feet, the taper is 48 feet, the storage/deceleration combined section, 40 feet (88 feet total), and the turn carries more traffic with no accident history (Exhibit 1, Page 9). Similarly, there are no traffic safety problems with the double left turn off Snowden River Parkway onto the retail area accessed from a right turn-in from Snowden Square Drive, where there is 163 feet spacing between Snowden River Parkway and the retail right turn-in. These exhibits also indicate to Mr. Cornelius that motorists learn which turn lane to utilize when there are two right or left turn lanes.

13. The County regularly authorizes deceleration lanes of lesser total length than recommended by the AASHTO Green Book, Mr. Cornelius testified. Referring to Appellant's Exhibit 4, he explained it comprises aerial and street level photographs of seven right turn county deceleration lanes. No safety problems exist for these turns, and only one rear-end collision is listed in the Howard County crash listing inventory.

Location	Turn Lane/Taper/ Total Length (Ft.)	Speed Limit
Tamar Dr. and Carriage House Lane	117/22/139	25
Frederick Road and St. John's Church	100/75/17	25
Frederick Road and Howard County Library	110/25/135	35
MD 99 and Rose Trail	115/40/155	40
MD 99 and Green Clover Drive	60/40/100	40
Rogers Ave. and N. Ridge Rd.	120/100/220	30/35
Rogers Ave. and Church Lane	120/90/210	30/30

14. Diane Schwarzman, Chief of Traffic Engineering in the Department of Public Works, Bureau of Highways, testified to reviewing site development plans sent by DPZ since 1991. She

testified to opposing the right-hand turn when she first reviewed the SDP, and that the inclusion of the deceleration lane caused her to recommend approval.

15. Discussing the AASHTO Green Book, she stated it does not address all roadway design scenarios. In such cases, the County relies on its engineering judgment, guidelines and standards and practical judgment. She agreed with Mr. Cornelius that the proposed lane is more consistent with Chapter 9 of the AASHTO Green Book. The new symmetrical reverse curve allows motorists to access the turn lane more quickly and it looks better. Symmetrical reverse curves are frequently used in the County.

16. Referring to Appellant's Exhibit 6, she explained it depicts accident data for the years 2006, 2007, and 2008. In 2006, at the MD 175/Thunder Hill Road intersection there were nine rear-end collisions on MD 175, one side-swipe collision, and one accident where the motorist apparently turned into Thunder Hill Road from eastbound MD 175 and jumped the directional island. In 2007, there were eight rear-end collisions on MD 175, one on northbound Thunder Hill Road, and one side-swipe collision in the intersection. In 2009, there were 13 rear-end collisions, three sideswipe collisions, and one head-on collision.

17. Tom Butler, the DPZ Deputy Director who coordinates and oversees the SRC, testified SDP 08-097 was a fast-track (expedited) plan on two-week review. Although the review agencies generally put their review comments in writing in a timely manner, reviewers do not always follow this procedure. With the introduction of a checklist review process, the absence of a comment submission by a particular agency is considered tacit approval, especially when a state authority's comments are advisory because they have no regulatory authority, as is the case with SHA's comments regarding the deceleration lane along Thunder Hill Road.

18. Referring to Appellant's Exhibit 5, the SRC checklist for SDP 08-097, the "VOM Walgreens Drugstore," Mr. Butler explained SHA's Daniel Doherty had checked off the bottom line, which denotes approval of a plan with no comments, on October 23, 2008.

19. Charles Dammers, DPZ's Chief of Development Engineering, testified that after the Planning Board proceeding, he asked SHA's Daniel Doherty for a letter to confirm his prior position that SHA was supportive of the deceleration lane before the Planning Board proceeding. The letter to Mr. Dammers, Appellant's Exhibit 1, Page 8, is dated April 3, 2009, and states in pertinent part that SHA's early May 21, 2008 review comments expressed concern about the right-in from Thunder Hill Road. It goes on to state the developer addressed this concern by providing a deceleration lane, that the SHA was willing to recommend plan approval (recognizing its comments were advisory), and also requested Mr. Dammers to accept the letter comments in lieu of the missing signed transmittal from SHA recommending plan approval.

20. Froydis Beckerman testified the deceleration lane was undersized and unsafe. Referring to Opponents' Exhibit 1, excerpts from the AASHTO Green Book, she stated the Planning Board properly denied the proposed FDP amendment because it did not comply with Chapter 10's Exhibit 10-73 and its considerations for taper length. Referring to Section 2.6.D of DM Vol. III, which provides that the clearance for driveways near a minor arterial shall be 350 feet, she testified the deceleration lane entrance does not meet this standard.

21. Concerning the Planning Board's denial based in part on its understanding that SHA was opposed to the deceleration lane, Ms. Beckerman testified to having reviewed the proceeding file and copying two e-mails, which she asserted is evidence of the SHA's opposition to the deceleration lane before the Planning Board proceeding. The first, sent dated September 2,

2008, by Tanya Maenhardt, a DPZ plan review planning supervisor and Planning Board presenter, to Dan Doherty, SHA, asked if he had any comments regarding the latest revision of the plan revision received on August 1, 2008. The second, from Dan Doherty to Tanya Maenhardt, is dated September 4, 2008, and states he does not believe SHA has additional comments and our issue was spacing of the right-in proposed along the intersection of Thunder Hill Road and MD 175. It also states that if the right-in is still there, remove it. In response to a cross-examination question about which plan Mr. Doherty's September 4, 2008 email references, considering that the deceleration lane was not added to the plan until August 19, 2009, she stated the issue of the SHA's position on the deceleration lane was a diversion for the fact that a big box store is unsuited to the site, that the village would lose the Food Lion grocery store in the village center if the Walgreens was built, and that a commercial use was inappropriate at a gateway to a residential area.

22. Sandy Cedarbaum, VOM manager, testified to the village's support of the proposed deceleration lane, and to the village's discussion of the deceleration lane plan at public meetings over many months.

23. Marsha White, a VOM board member, supported the elimination of the restrictions. She stated the board's safety concerns have been met and that the seven-member board voted unanimously in favor of the proposal. On Ms. Schwarzman's recommendation, the Board looked at two shortened deceleration lanes similar to the Walgreens lane, Tamar Drive and Carriage House Lane, and Dobbin Road and Dobbin Center Lane. None of these deceleration lanes had reported accidents, according to Ms. Schwarzman. Ms. White also explained the VOM was engaged in a revitalization plan, including the village center, which has several vacancies, and

concluded the proposed Walgreens would spur the revitalization.

24. Abby Hendrix, VOM board chair, testified to the support of the auxiliary lane, which would provide safe access, more so than the existing right turn lane at Twin Knolls.

25. Karen Gray testified that Manekin, LLC, and Diane Schwarzman spoke to the VOM board on many occasions. Based on these discussions, she concluded the proposed deceleration lane would be safer than the absence of one.

26. Kevin White, who lives on the north side of MD 175, testified that in 25 years he has never witnessed an accident on the left turning traffic into the partly commercial area on Lightning View Road, as depicted on Exhibit 1, Page 9, which he stated was comparable to the projected traffic associated with Walgreens.

#### Standard of Review

The Howard County Code, Section 16.301 authorizes the Board of Appeals "[t]o hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of this title or of any regulations adopted pursuant to it."

Section 1.106.G of the Planning Board's Rules of Procedure provides that appeals to the Board of Appeals of decisions made pursuant to the Planning Board's administrative decision-making authority shall be heard de novo by the Board of Appeals in accordance with the Board of Appeal's Rules of Procedures.

Additionally, Hearing Examiner Rule 10.5 permits the hearing examiner to grant or deny the petition, grant the petition with modifications or conditions, or, in the case of an administrative appeal, remand the case to the agency for further proceedings.

In this case, these provisions mean that if I find the Planning Board's decision to deny FDP-43-A-III was in error, the de novo appellate hearing is designed to and permits me to hear new testimony and evidence and to correct any error by granting the proposed amendment upon making the requisite findings and conclusions.

Upon consideration of the evidence presented, and for the reasons stated below, I have determined the Appellant has demonstrated the Planning Board erred in its decision to deny FDP-43-A-III and I am granting the Appellant's petition to amend FDP-43-A-III as requested

### **DISCUSSION**

#### **I. The Planning Board Erred in Denying FDP-43-A-III**

The Planning Board in main part based its decision to deny the Appellant's request to amend FDP 43-A-II by eliminating the access/egress restrictions from the Site Design Criteria and removing the "Vehicular Ingress and Egress Restriction" line along Thunder Hill Road on the understanding that SHA had recommended the plan be denied. Although SHA initially recommend denial, this recommendation stemmed from the plan's early proposal to add a right turn-in. The evidence before me convinces me the state agency had changed its position prior to the Planning Board proceeding and approved the restrictions' elimination once the deceleration lane replaced the right turn-in on the Appellant's plan(s), which occurred in late August 2008.

On May 21, 2008, SHA's Daniel Doherty initially recommended to the Planning Board that it deny the plan amendment, based on his opposition to the right turn-in. The SDP was amended in late August to propose a deceleration lane. On October 23, 2008, Daniel Doherty submitted his comments on SDP-08-097 to the DPZ Division of Land Development, via the revised or updated Review and Comments Checklist. By simply checking off the statement on

the bottom of the checklist, he approved the plan without comments.

Mr. Doherty formally memorialized SHA's position in a post-Planning Board proceeding letter to Charles Dammers, DPZ's Development Engineering Division Chief, on April 3, 2009. The letter states SHA was willing to recommend SDP 08-097's approval because the developer addressed his early review comments of May 21, 2008, which concerned the right-hand turn, by providing a deceleration lane. It also requested Mr. Dammers to accept the letter comments in lieu of the missing signed transmittal from SHA recommending plan approval.

Based on this evidence, it is clear SHA did not object to the proposed elimination of the vehicular ingress and egress restrictions along Thunder Hill Road once the Appellant amended the site development plan to eliminate the right-in and propose a deceleration lane. To the extent the Planning Board denied FDP-43-III based on its understanding that SHA was opposed to the deceleration lane, it was in error.

## **II. Findings and Conclusions Supporting My Decision to Grant the Appellant's Proposed Amendment (FDP-43-A-III)**

By Section 125.D.1 of the Howard County Zoning Regulations, amendments to a Final Development Plan shall be reviewed "in accordance with Section 125.C above." Section 125.C.9 provides in turn, that in acting upon the Final Development Plan, the Planning Board shall be guided by the approved Comprehensive Sketch Plan and comments received from the various public agencies that reviewed the Final Development Plan, and shall not unreasonably disapprove or change the Final Development Plan. In considering the Comprehensive Sketch Plan, Section 125.C.5.a instructs the Planning Board to be guided by Section 125 and to particularly consider in pertinent part the "adequacy of the roads serving the proposed



development . . ." Upon consideration of the evidence presented, and for the reasons stated below, I have determined to grant the Appellant's proposed amendment because the proposed deceleration lane and roadways are adequate to support the proposed Walgreens.

For the convenience of the reader, these findings of fact and conclusions of law are organized by subject matter to the extent possible. Part A addresses the proposed deceleration lane in relation to with AASHTO Green Book and DM Vol. III criteria and guidelines. Part B addresses traffic and public safety.

#### **A. The Proposed Deceleration Lane's Design**

DM Vol. III and the AASHTO Green Book (the "design manuals") provide criteria for the design of auxiliary lanes. The main purpose of an auxiliary deceleration lane is to reduce the risk of rear-end collisions by allowing speed reduction and right turns to take place. An auxiliary deceleration lane has three parts, the entrance taper, the deceleration lane, and the stacking or storage area. To avoid confusion between the customary term "deceleration lane" as generally used in this Decision and Order, and the middle component of an auxiliary deceleration lane, I use the phrase "auxiliary deceleration lane" in this section to refer to the entirety of the lane.

The Howard County Design Manual, Vol. III, Roads and Bridges, provides the guidelines, criteria, and standards for the design of safe, efficient, and coordinated road systems. Section 1.1.C states the manual is generally compatible with AASHTO and the Maryland State Highway Administration, and is intended to supplement and substantially conform to AASHTO criteria. It further states the manual's purpose is not to restrict design professionals, but to assist them in completing projects efficiently and economically within the framework of the design

parameters established therein.

DM Vol. III, Section 2.5 addresses the design elements of auxiliary lanes at intersections. Section 2.5.A states the procedures in this section are intended to assure the "best possible design layout" for intersections. Paragraph One of Section 2.5.B.5 explains the functional standard of auxiliary lanes at intersections.

Auxiliary lanes at intersections are used to increase capacity of the through movement, provide storage for turning vehicles and provide sufficient space for vehicles to decelerate from the design speed of a new roadway or 85<sup>th</sup> percentile operating speed of an existing roadway to either a stop or the safe speed for the turn . . .

Paragraph Five provides in pertinent part more specific guidance for the designed length of an auxiliary deceleration lane at an intersection.

The length of an auxiliary lane is composed of three parts: entering taper, deceleration lane, and storage length. Though the total length should be the sum of the lengths [sic]. The minimum length for . . . deceleration lanes shall be in accordance with . . . AASHTO, "Policy on Geometric Design of Highways and Streets 2004," Exhibit 10-73, *Minimum Deceleration Lengths for Exit Terminals with Flat Grades of Two Percent or Less* . . .

DM Vol. III, Page 2-29. I take notice here of the inartful second sentence in Paragraph Five—"Though the total length should be the sum of the lengths"—about which more will be said below.<sup>2</sup>

Importantly, as Mr. Cornelius and Ms. Schwarzman testified, the subject of DM Vol. III, Section 2.5 is intersection design, yet it refers design professionals to a table, Exhibit 10-73, in Chapter 10 of the AASHTO Green Book, the subject of which is high-volume, grade-separated roadway and interchange road design. Chapter 10 itself instructs the design

professional to Chapter 9 for discussion of speed-change lanes applicable to at-grade intersections (Appellant's Exhibit 3, AASHTO Green Book Page 845). What's more, Chapter 10 does not set distinct minimum length standards for each of the three parts of an auxiliary deceleration lane. Rather it more generally describes two different types of exits (taper-type exits and parallel-type exits), with the length of each to be designed to safely accommodate high speeds (60 MPH) and high volumes of traffic. For these reasons, Mr. Cornelius and Ms. Schwarzman concur that Chapter 9 of the AASHTO Green Book is the more appropriate general guide for the design of the auxiliary deceleration lane at issue in this case.<sup>3</sup> I agree.

The pertinent section of Chapter 9 is a broad discussion of the length of each of the three components of auxiliary deceleration lanes (entering taper, deceleration, and storage), with frequent caveats about the lengths endorsed therein. For example, the lengths "should be accepted as a desirable goal and should be provided where practical." "Desirably, the total length of the auxiliary lane should be the sum of the length for these three components. Common practice is to accept a moderate amount of deceleration with the through lanes and to consider the taper length as part of the deceleration within the through lanes . . ." (AASHTO Green Book, Page 714). Put simply, the AASHTO Green Book sanctions varying the length of the three individual components of an auxiliary deceleration lane. In my view, this is also the intent of Paragraph Five of DM Vol. III, however inartfully it informs the design professional of its acceptance of the same practice.

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<sup>2</sup> DM Vol. III was revised in 2006. Perhaps the inartful language was an editing error.

<sup>3</sup> Chapter 9 in the AASHTO Green Book itself refers the design professionals to Chapter 10 only where the highway crossing involves grade separations without ramps and interchanges.

It was Mr. Cornelius' testimony that Chapter 9's actual recommended deceleration length for "comfortable deceleration to a stop" from the full design speed of a highway with a design speed of 30 MPH is 170 feet (Exhibit 3, AASHTO Green Book, Page 714). Mr. Cornelius further explained the deceleration lane length may be proportionally reduced because DM Vol. III, Section 2.5.B.5 permits an auxiliary deceleration lane to be designed in accordance with the 85<sup>th</sup> percentile speed of an existing roadway (in this case 25-26 MPH based on the speed studies).

Chapter 9's recommended length for the deceleration lane of the auxiliary deceleration lane at issue in this case is 113 feet, and the reverse symmetrical taper, 50 feet. Motorists would already be decelerating as they approached the 163-foot deceleration portion of the lane, with 90 additional feet to decelerate further in what in my view is a very long storage or stacking area. The proposed auxiliary deceleration lane thus provides a 220-foot path for motorists to reduce speed before coming to a stop inside the Walgreens site.

Mr. Cornelius and Ms. Schwarzman, traffic design professionals with years of experience in traffic engineering, presented substantial evidence and testimony to the effect that the total 220-foot length of the auxiliary deceleration lane and its location comports with the two road design manuals. In arriving at this conclusion, they also took into accounts two other factors. First, DM Vol. III and Chapters 9 and 10 of the AASHTO Green Book are intended as practical guidelines and standards only for auxiliary deceleration lanes along *arterial* roads such as MD 175 (an intermediate arterial highway), which have higher speeds and carry more vehicles than

lower-speed, less traveled collector roads, such as Thunder Hill Road.<sup>4</sup> Second, the proposed auxiliary deceleration lane is not to be located at an intersection, the design scenario in both manuals; rather it is an access point into a commercial development site.

The testimony and evidence additionally and convincingly demonstrate the County's approval of multiple auxiliary deceleration lanes requiring special and distinctive solutions consistent with the two design manuals' parameters. Appellant's Exhibit 4 photographically depicts seven such auxiliary deceleration lanes and all of but two of which are shorter in overall length than that proposed along Thunder Hill Road. Only one accident, a rear-end collision, is listed in the Howard County crash listing inventory at these locations, some of which have higher travel speeds than Thunder Hill Road. Nor do the two exhibits in Appellant's Exhibit 1, Pages 9 and 10, strictly conform to county standards.

In approving the Appellant's proposed auxiliary deceleration lane, I conclude the Appellant has demonstrated it is consistent with the AASHTO Green Book and DM Vol. III county road design criteria. The design criteria in these manuals or policy documents are not inflexible rules, but principles of good design, which the Appellant has applied.

#### **B. Traffic and Public Safety**

I am also persuaded the Appellant has met its burden of demonstrating the proposed deceleration lane and area roadways will provide safe access to the site and will not be a detriment to public safety. To the extent that the Planning Board relied on traffic and public safety concerns in denying FDP-A-43-III, I also conclude the Board was in error for the reasons stated herein.

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<sup>4</sup> DM Vol. III, Section 1.5 explains the County road classification system.

From a road design perspective, the purpose of a deceleration lane is to allow motorists to reduce their operating speed in order to enter a site access point safely and without vehicles stacking at or near the entrance or in the through lanes. In this case, the proposed right deceleration lane into Walgreens would be located along southbound Thunder Hill Road, a design scenario intended to permit motorists to reduce their speed in the 163-foot deceleration lane before entering the 90-foot stacking lane, without reducing speed considerably or stopping in either of the two southbound through lanes.

I am persuaded by Ms. Schwarzman's opinion, who as Chief of Traffic Engineering in the Department of Public Works, Bureau of Highways, testified the new symmetrical reverse curve would allow motorists to access the auxiliary deceleration turn lane safely and more quickly and that the County frequently uses the reverse curve.

Also convincing is the Appellant's expert witness opinion evidence and testimony about the operational traffic issues inherent to the proposed auxiliary deceleration lane, which demonstrate no negative impact on traffic and public safety. These include Appellant's Exhibit 2, the traffic impact study examining existing background and future development trip generation rates in the project area, traffic circulation patterns (Appellant's Exhibit 1, Page 5), and the testimony of Mr. Cornelius and supporters concerning the absence of traffic or public safety problems in the area of the auxiliary deceleration lanes depicted in Appellant's Exhibit 1 (Pages 9 and 10) and 4. As Ms. Schwarzman testified, when traffic accidents occurred, they did so predominately at the stoplight along MD 175, at its intersection with Thunder Hill Road. MD 175, an arterial road, is a high-volume road, where in my professional experience and based on my site visit, the average travel speed is regularly much higher than the posted 50 MPH speed

limit.

### **C. Opponents' Testimony<sup>5</sup>**

The persons who testified in opposition to the removal of the ingress/egress restrictions proposed in FDP-43A-III spoke generally to potential traffic and safety problems stemming from motorists weaving across or stopping in the through lanes along Thunder Hill Road as they attempted to access the deceleration lane. Several opponents referenced traffic safety problems at other intersections as evidence of what motorists would face along Thunder Hill Road. Given the speculative nature of this testimony, I accord it no evidentiary weight.

I reach the same conclusion about their testimony that the proposed Walgreens store belongs in the village center, that it is inappropriate to the Site, or that it would contribute to the village center's further decline. The Site has been approved as an employment center/commercial area for some 30 years. The Appellant's FDP amendment does not propose to change the Site's land use, only to eliminate access restrictions.

Lastly, I note here the testimony of those persons speaking against the elimination of the access restrictions as contrary to James Rouse's vision for Columbia. In their words, Mr. Rouse imposed this restriction several decades ago and the County should respect his decision.

It was the Howard County Planning Board, however, not Columbia developer Mr. Rouse, who imposed the restriction. When the Planning Board approved FDP-43-A in the late 1970s, it did so subject to numerous Site Design Criteria, including Criteria 2B, which states: "Vehicular ingress and egress to Relocated Maryland 175 (little Patuxent Parkway), and Thunder Hill Road

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<sup>5</sup> During the proceeding, I announced I was ending the long-standing, unwritten rule of limiting participation in administrative appeals to the Appellant and Appellees of record.

is restricted except as approved by the Howard County Planning Board."<sup>6</sup> Hence the Appellant's petition to the Planning Board for approval of FDP-43-A-III to eliminate these restrictions.

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<sup>6</sup> The Sheet is amended to include reference to FDP-43-A-II, but the pertinent text is unchanged from the original.



**ORDER**

Based upon the foregoing, it is this 15<sup>th</sup> day of June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Thunder Hill, LLC, to amend FDP-43-A-II through FDP-43-A-III by:

1) updating Sheet 1 of 5, "Summary of Amendments" to add Phase 43-A-III to the Amendment Chart and providing a Purpose Statement;

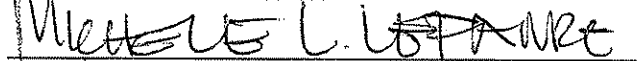
2) on Sheet 3 of 5, removing the following sentence from Section 3b. Site Design Criteria- Entrances; "Entrance to and egress from the commercial areas may only be gained from Twin Knolls Road," and;

3) on Sheet 4 of 5, removing the "vehicular ingress and egress" restriction line along Thunder Hill Road only;

is hereby **APPROVED**.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**



Michele L. LeFaivre

6/16/09

Date Mailed

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.